
HOUSE BILL 2377

State of Washington 60th Legislature 2007 Regular Session

By Representatives Pearson, McCune, Roach, Kristiansen, Ahern, Warnick, Hailey, Orcutt, Hinkle, Ross, Haler, Curtis, Campbell, Newhouse and Bailey

Read first time 03/05/2007. Referred to Committee on Human Services.

1 AN ACT Relating to improving state supervision of felony offenders
2 in the community; amending RCW 9.94A.737 and 9.94A.631; adding new
3 sections to chapter 72.09 RCW; creating a new section; and prescribing
4 penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 9.94A.737 and 2005 c 435 s 3 are each amended to read
7 as follows:

8 (1) If an offender violates any condition or requirement of
9 community custody, the department may transfer the offender to a more
10 restrictive confinement status to serve up to the remaining portion of
11 the sentence, less credit for any period actually spent in community
12 custody or in detention awaiting disposition of an alleged violation
13 and subject to the limitations of subsection (2) of this section.

14 (2)(a) For a sex offender sentenced to a term of community custody
15 under RCW 9.94A.670 who violates any condition of community custody,
16 the department may impose a sanction of ~~((up to sixty days¹))~~ total
17 confinement ((in a local correctional facility)) for a period of time
18 up to the offender's remaining term of community custody for each
19 violation. If the department imposes a sanction, the department shall

1 submit within seventy-two hours a report to the court and the
2 prosecuting attorney outlining the violation or violations and the
3 sanctions imposed.

4 (b) For a sex offender sentenced to a term of community custody
5 under RCW 9.94A.710 who violates any condition of community custody
6 after having completed his or her maximum term of total confinement,
7 including time served on community custody in lieu of earned release,
8 the department may impose a sanction of (~~up to sixty days in a local~~
9 ~~correctional facility~~) total confinement for a period of time up to
10 the offender's remaining term of community custody for each violation.

11 (c) For an offender sentenced to a term of community custody under
12 RCW 9.94A.505(2)(b), 9.94A.650, or 9.94A.715, or under RCW 9.94A.545,
13 for a crime committed on or after July 1, 2000, who violates any
14 condition of community custody after having completed his or her
15 maximum term of total confinement, including time served on community
16 custody in lieu of earned release, the department may impose a sanction
17 of (~~up to sixty days in~~) total confinement for a period of time up to
18 the offender's remaining term of community custody for each violation.
19 The department may impose sanctions such as work release, home
20 detention with electronic monitoring, work crew, community restitution,
21 inpatient treatment, daily reporting, curfew, educational or counseling
22 sessions, supervision enhanced through electronic monitoring, or any
23 other sanctions available in the community.

24 (d) For an offender sentenced to a term of community placement
25 under RCW 9.94A.705 who violates any condition of community placement
26 after having completed his or her maximum term of total confinement,
27 including time served on community custody in lieu of earned release,
28 the department may impose a sanction of (~~up to sixty days in~~) total
29 confinement for a period of time up to the offender's remaining term of
30 community placement for each violation. The department may impose
31 sanctions such as work release, home detention with electronic
32 monitoring, work crew, community restitution, inpatient treatment,
33 daily reporting, curfew, educational or counseling sessions,
34 supervision enhanced through electronic monitoring, or any other
35 sanctions available in the community.

36 (3) If an offender is accused of violating any condition or
37 requirement of community custody, he or she is entitled to a hearing
38 before the department prior to the imposition of sanctions. The

1 hearing shall be considered as offender disciplinary proceedings and
2 shall not be subject to chapter 34.05 RCW. The department shall
3 develop hearing procedures and a structure of graduated sanctions.

4 (4) The hearing procedures required under subsection (3) of this
5 section shall be developed by rule and include the following:

6 (a) Hearing officers shall report through a chain of command
7 separate from that of community corrections officers;

8 (b) The department shall provide the offender with written notice
9 of the violation, the evidence relied upon, and the reasons the
10 particular sanction was imposed. The notice shall include a statement
11 of the rights specified in this subsection, and the offender's right to
12 file a personal restraint petition under court rules after the final
13 decision of the department;

14 (c) The hearing shall be held unless waived by the offender, and
15 shall be electronically recorded. For offenders not in total
16 confinement, the hearing shall be held within fifteen working days, but
17 not less than twenty-four hours, after notice of the violation. For
18 offenders in total confinement, the hearing shall be held within five
19 working days, but not less than twenty-four hours, after notice of the
20 violation;

21 (d) The offender shall have the right to: (i) Be present at the
22 hearing; (ii) have the assistance of a person qualified to assist the
23 offender in the hearing, appointed by the hearing officer if the
24 offender has a language or communications barrier; (iii) testify or
25 remain silent; (iv) call witnesses and present documentary evidence;
26 and (v) question witnesses who appear and testify; and

27 (e) The sanction shall take effect if affirmed by the hearing
28 officer. Within seven days after the hearing officer's decision, the
29 offender may appeal the decision to a panel of three reviewing officers
30 designated by the secretary or by the secretary's designee. The
31 sanction shall be reversed or modified if a majority of the panel finds
32 that the sanction was not reasonably related to any of the following:
33 (i) The crime of conviction; (ii) the violation committed; (iii) the
34 offender's risk of reoffending; or (iv) the safety of the community.

35 (5) For purposes of this section, no finding of a violation of
36 conditions may be based on unconfirmed or unconfirmable allegations.

37 (6) The department shall work with the Washington association of
38 sheriffs and police chiefs to establish and operate an electronic

1 monitoring program for low-risk offenders who violate the terms of
2 their community custody. Between January 1, 2006, and December 31,
3 2006, the department shall endeavor to place at least one hundred low-
4 risk community custody violators on the electronic monitoring program
5 per day if there are at least that many low-risk offenders who qualify
6 for the electronic monitoring program.

7 (7) Local governments, their subdivisions and employees, the
8 department and its employees, and the Washington association of
9 sheriffs and police chiefs and its employees shall be immune from civil
10 liability for damages arising from incidents involving low-risk
11 offenders who are placed on electronic monitoring unless it is shown
12 that an employee acted with gross negligence or bad faith.

13 **Sec. 2.** RCW 9.94A.631 and 1984 c 209 s 11 are each amended to read
14 as follows:

15 If an offender violates any condition or requirement of a sentence,
16 a community corrections officer may arrest or cause the arrest of the
17 offender without a warrant, pending a determination by the court. (~~If~~
18 ~~there is reasonable cause to believe that an offender has violated a~~
19 ~~condition or requirement of the sentence,~~) An offender may be required
20 to submit to a search and seizure of the offender's person, residence,
21 automobile, or other personal property. A community corrections
22 officer may also arrest an offender for any crime committed in his or
23 her presence. The facts and circumstances of the conduct of the
24 offender shall be reported by the community corrections officer, with
25 recommendations, to the court.

26 If a community corrections officer arrests or causes the arrest of
27 an offender under this section, the offender shall be confined and
28 detained in the county jail of the county in which the offender was
29 taken into custody, and the sheriff of that county shall receive and
30 keep in the county jail, where room is available, all prisoners
31 delivered to the jail by the community corrections officer, and such
32 offenders shall not be released from custody on bail or personal
33 recognizance, except upon approval of the court, pursuant to a written
34 order.

35 NEW SECTION. **Sec. 3.** A new section is added to chapter 72.09 RCW
36 to read as follows:

1 The department shall perform random, unannounced inspections of the
2 residence of every offender serving a term of community custody. The
3 purpose and scope of the search shall be to determine whether the
4 offender is complying with the terms of his or her community custody.

5 NEW SECTION. **Sec. 4.** A new section is added to chapter 72.09 RCW
6 to read as follows:

7 The department shall develop a performance review whenever an
8 offender serving a term of community custody is convicted of a new
9 crime to determine whether the department contributed to the
10 circumstances that allowed the crime to occur. Beginning January 1,
11 2008, the department shall compile and submit copies of the reviews
12 developed during the previous calendar year to the governor and the
13 legislature.

14 NEW SECTION. **Sec. 5.** A new section is added to chapter 72.09 RCW
15 to read as follows:

16 (1) Beginning January 1, 2008, the department shall submit an
17 annual report to the governor and the legislature containing:

18 (a) The number of offenders supervised by the department during the
19 previous calendar year;

20 (b) The number and custody levels of offenders who violated one or
21 more conditions of their community custody during the previous calendar
22 year; and

23 (c) The number and custody levels of offenders who were convicted,
24 during the previous calendar year, of new offenses that were committed
25 while the offenders were on community custody.

26 (2) The department shall perform a study to determine whether it
27 has the capacity to adequately supervise all offenders who are serving
28 a term of community custody. The department shall report the results
29 of this study along with a plan to efficiently and effectively improve
30 its supervision capacity to the governor and the legislature by January
31 1, 2008. For purposes of this subsection, "adequately supervise" means
32 to supervise in a manner that minimizes the number of community custody
33 violations and new crimes committed by offenders under supervision.

34 NEW SECTION. **Sec. 6.** A new section is added to chapter 72.09 RCW
35 to read as follows:

1 (1) The department may not release any offenders on community
2 custody until July 1, 2008. The prohibition in this subsection applies
3 regardless of whether the community custody is the result of earned
4 release time or is part of the offender's sentence.

5 (2) In no case shall the department hold an offender in total
6 confinement under this section longer than his or her total term of
7 confinement plus any term of community custody that is part of his or
8 her sentence.

9 NEW SECTION. **Sec. 7.** Sections 1 through 3 of this act apply to
10 any offender under the supervision of the department of corrections on
11 or after the effective date of this act.

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